

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

LLOYD T. ELDER, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:20-cv-00220-JPH-MJD
	)	
KEISHA DOBSON, et al.	)	
	)	
Defendants.	)	

**Order Reconsidering Order Granting Motion for Assistance with Recruiting Counsel**

Plaintiff Lloyd Elder filed this lawsuit alleging that the defendants failed to provide him with adequate medical care. The defendants raised the affirmative defense that Mr. Elder failed to exhaust his available administrative remedies as required by the Prison Litigation Reform Act and the Court agreed to attempt to recruit counsel to represent Mr. Elder for purposes of an evidentiary hearing on this defense. Because the defendants have withdrawn the defense and a hearing is no longer necessary, that order must be reconsidered.

Litigants in federal civil cases do not have a constitutional or statutory right to court-appointed counsel. *Walker v. Price*, 900 F.3d 933, 938 (7th Cir. 2018). Instead, 28 U.S.C. § 1915(e)(1) gives courts the authority to "request" counsel. *Mallard v. United States District Court*, 490 U.S. 296, 300 (1989). As a practical matter, there are not enough lawyers willing and qualified to accept a pro bono assignment in every pro se case. *See Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014) ("Whether to recruit an attorney is a difficult decision: Almost everyone would benefit from having a lawyer, but there are too many indigent litigants and too few lawyers willing and able to volunteer for these cases.").

"When confronted with a request under § 1915(e)(1) for pro bono counsel, the district court is to make the following inquiries: (1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Eagan v. Dempsey*, 987 F.3d 667, 682 (7th Cir. 2021) (quoting *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007)). These two questions "must guide" the Court's determination whether to attempt to recruit counsel. *Id.* These questions require an individualized assessment of the plaintiff, the claims, and the stage of litigation. *See Pruitt*, 503 F.3d at 655-56. The Seventh Circuit has specifically declined to find a presumptive right to counsel in some categories of cases. *McCaa v. Hamilton*, 893 F.3d 1027, 1037 (7th Cir. 2018) (Hamilton, J., concurring); *Walker*, 900 F.3d at 939.

The first question, whether litigants have made a reasonable attempt to secure private counsel on their own "is a mandatory, threshold inquiry that must be determined before moving to the second inquiry." *Eagan*, 987 F.3d at 682; *see also Thomas v. Anderson*, 912 F.3d 971, 978 (7th Cir. 2019) (because plaintiff did not show that he tried to obtain counsel on his own or that he was precluded from doing so, the judge's denial of these requests was not an abuse of discretion). Mr. Elder states that he does not have money to send letters or to make phone calls to lawyers and that he has sent letters to four lawyers and has not received a response. The Court finds that he has made a reasonable effort to recruit counsel on his own before seeking the Court's assistance. He should continue his efforts to find counsel.

"The second inquiry requires consideration of both the factual and legal complexity of the plaintiff's claims and the competence of the plaintiff to litigate those claims himself." *Eagan*, 987 F.3d at 682 (citing *Pruitt*, 503 F.3d at 655). "Specifically, courts should consider


'whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself.'" *Id.* (quoting *Pruitt*, 503 F.3d at 655). "This assessment of the plaintiff's apparent competence extends beyond the trial stage of proceedings; it must include 'the tasks that normally attend litigation: evidence gathering, preparing and responding to motions and other court filings, and trial.'" *Id.* (quoting *Pruitt*, 503 F.3d at 655).

In support of his motion for assistance with recruiting counsel, Mr. Elder states that he has little education in the law and only eight years of school. His claims in this case are that defendant Ms. Dobson refused him care for his mental health and access to a handicap cell. He also alleges that Ms. Smith refused him medical care and gave him too much and the wrong kind of medication. He has so far been able to explain those claims to the Court and he has survived the defendants' motion for summary judgment on the exhaustion defense. The Court finds, therefore, that Mr. Elder is competent to litigate the case at this time.

Mr. Elder's motion for assistance recruiting counsel is **denied without prejudice**. Dkt. 64. Mr. Elder may renew his motion if the cases progresses to a point at which he believes he can no longer pursue his claims. And the Court will remain alert to changes in circumstances that may warrant reconsideration of the motion, such as a settlement conference or trial.

**SO ORDERED.**

Date: 7/26/2021

  
James Patrick Hanlon  
United States District Judge  
Southern District of Indiana

Distribution:

LLOYD T. ELDER, SR.  
SULLIVAN COUNTY JAIL  
24 S. State Street  
Sullivan, IN 47882

Douglass R. Bitner  
KATZ KORIN CUNNINGHAM, P.C.  
dbitner@kkclegal.com